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JOHN E. DAVIS, CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969
No. 1345

JAMES D. SULLIVAN,

Petitioner,

vs.

EDWARD J. CHOQUETTE,
HARVEY BEIT, an attorney,
JONATHAN G. WELLS III, an attorney,

and

T. FRANCIS KELLEHER, former clerk of the Newburyport, Massachusetts District Court,

Respondents.

PETITION FOR REHEARING FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR REHEARING

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James D. Sullivan petitions for a rehearing arising from the United States Supreme Court's denial for a Petition for a Writ of Certiorari directed to the United States Court of Appeals for the First Circuit, entered on May 18, 1970.

OPINIONS BELOW

The denial for Certiorari is set forth in the Appendix as "A".

The Opinion of the United States Court of Appeals for the First Circuit is set forth in the Appendix as "B", and is also reported in 420 F. 2nd 674.

The United States District Court's ruling is set forth in the Appendix as "C".

The opinion in companion cases are set forth in the order below:

Sullivan v. Kelleher ..... 405 F. 2nd 486
(action in tort for wilful, wanton, and reckless conduct; negligence and unskillful conduct, and gross negligence)

Sullivan v. Choquette, et al ..... 289 F. Supp. 780
(action in tort for abuse of process; action for breach of contract of lease)

Sullivan v. Choquette, No. 7253 ..... Appendix "D"
U.S. Court of Appeals for First Cir.
(dismissed lack of prosecution)

Sullivan v. Choquette (Writ of Error) ..... unreported
Superior Court of Mass., Essex Co.,
No. 139,788, dismissed for want of jurisdiction of Superior Court over writ of error proceedings. Oct. 14, 1968

Sullivan v. Choquette ..... pending in action
and the Justices of the Newburyport
District Court (Writ of Error)
Supreme Judicial Court of Mass.,
Essex Co. No. 2663, filed February 7, 1970

JURISDICTION

Jurisdiction of this Court is invoked under 28 USC 1254 from a judgment of the United States Court of Appeals for the First Circuit, entered on December 30, 1969, which affirmed a judgment of the United States District Court for the District of Massachusetts.

BASIS OF FEDERAL JURISDICTION

Federal Jurisdiction in the court of first instance was invoked under the fifth and fourteenth amendment of the Federal Constitution, and under 28 USC 1332, 28 USC 1343, 42 USC 1983, 42 USC 1985, and 42 USC 1986. Jurisdiction for partial relief prayed for was invoked under 28 USC 1651.

STATUTES INVOLVED

The Statutes involved are as follows:

Chapter 223, Section 31 SUMMONS: LEAVING AT THE LAST KNOWN ADDRESS, ETC. If the summons is not served personally on the defendant, the original or a copy, as the case may be, shall be left at his last and usual place of abode, if he has any in the Commonwealth known to the officer. If he has none, it shall be left with his tenant, agent, or attorney, if he has any within the Commonwealth known to the officer. If he has no such last and usual place of abode, and no tenant, agent or attorney, no service on him shall be required except as provided in the three following sections. MGLA C. 223 s 31.

Chapter 223, Section 34. FURTHER NOTICE TO ABSENT DEFENDANT. If the defendant is out of the Commonwealth, or if his residence is not known to the officer, and no personal service is made on him or on his

agent appointed under Section five of Chapter two hundred and twenty seven, he shall, in addition to the service herein prescribed, be entitled to further notice of the action as provided in said Chapter. MGLA C. 223 s 34.

Chapter 223, Section 84. DEFECTIVE SERVICE OF PROCESS; NECESSITY OF FURTHER SERVICE. If the service of a writ, process or order is defective or insufficient, the Court or tribunal to which it is returnable may, upon motion of the Plaintiff or Petitioner, issue further writs, processes and orders, which shall be served in such manner as may be therein directed; and upon due service thereof, the Court or tribunal shall thereby acquire the same jurisdiction of the subject and the parties as it would have obtained if such service had been made in pursuance of the original writ, process or order. The action, suit or proceeding shall be continued from time to time until such service is made. MGLA C. 223 s 84.

Chapter 227, Section 7. NOTICE. If a defendant in an action in the supreme judicial or superior court is absent from the Commonwealth or his residence is unknown to the officer serving the writ, and no personal service has been made on him or his agent appointed under Section five, or if the service of the writ is defective or insufficient by reason of a mistake of the Plaintiff or officer as to where or with whom the summons or copy ought to have been left, the Court, upon suggestion thereof by the Plaintiff, shall order the action to be continued until notice of the action is given in such manner as it may order. If the property of an absent defendant has been attached and the residence of such defendant is known to the Plaintiff and no legal service can be made upon him within the Commonwealth, except by publication, the Court may order personal service to be made on him in such manner as it may direct and, upon proof that service has been made, such defendant

shall be held to answer to the action. If the defendant does not appear, the Court may order the action continued and further notice given to him in such manner as it may direct. MGLA C. 227 s 7.

Chapter 231, Section 58. NOTICE OF DEFAULT OR DECREE PRO CONFESSO. Upon entry of a default or non-suit in an action at law or of an interlocutory decree in equity taking a bill pro confesso, the Clerk of the Court shall forthwith give written notice thereof, in such manner as the Court by rule shall direct, to the attorney of record, if any, of each party against whom such default, non-suit or decree is entered. If a party has no attorney of record, and if, in case of the entry of a default or interlocutory decree is as aforesaid, the officers return does not show that personal service of the writ, bill, or petition or complaint or order therein, as the case may be, has been made upon him, the notice shall be given to the party. MGLA C. 231 s 58.

Chapter 260, Section 2A. Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, actions of replevin, shall be commenced only within two years next after the cause of action accrues. MGLA C. 260 s 2A.

Chapter 260, Section 12. If a person liable to a personal action fraudulently conceals the cause of such action from the knowledge of the person so entitled to bring it, the period prior to the discovery of the cause of action so entitled shall be excluded in determining the time limited for the commencement of such action. MGLA C. 260 s 12.

REASONS FOR GRANTING THE PETITION FOR REHEARING

This Petitioner is satisfied by the pusillanimous ruling of The United States Court of Appeals, that, what is being defended here is not the legal grounds of rendering of default judgment void for error and fraud, but the doctrine of judicial immunity, whose armour has had a severe puncture and dent placed in it by the presence of a layman who has overcome all of the legal defenses set up by these Respondents in the form of the Statute of Limitations, and the doctrines of res judicata and judicial immunity; the only refutation of which has come in the fabricated form of "actual notice" by telephone, the reporting of which has carefully ommitted the 1500 miles distance the defendant traveled to appear on the date in the writ, with the circumstances creating an impossibility of appearance in conformity to that date. Another careful exclusion was that the defendant did not receive "actual notice" of the continued date, which was the actual trial date.[1] This now constitutes a monumental decision which reverses all prior decisions regarding service of process by constructive means, and now requires the defendants to bear the burden of service of process, and that now, 'due process' does not include "opportunity to be heard," only "actual notice," however distant the defendant may be.

Actually, in reality, the decision of the United States

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[1] Of all the acts of fraud by the Respondent Kelleher, the retroactive resetting on the docket of this date was the most prejudicial. The docket entries (Ex-128) appear to manifest that a continuance did not occur, yet the affidavit of the trial judge attests that it did. In either case the defendant Sullivan did not receive any "actual notice" of a continued date.

Court of Appeals is premised on fallicious grounds,[1] and the United States Supreme Court, by its unwillingness to review this dishonorable ruling, has condemned a cause of action which is based on the firmest of legal grounds. By its very context, this judgment imparts a false jurisdiction to a Massachusetts land court which committed a terrible error, and victimized a citizen and his children, whose only offense and crime was that his signature was needed to facilitate a seven thousand dollar land profit. This judgment protects the paradoxical situation that the very tort complained of here in the Plaintiff's Original Complaint is the creation of the false jurisdiction behind which the actors are hiding, while their tortious behavior continued with impunity.

For years, this Court and the Federal Courts have been passing down rulings to the effect that when a Court has jurisdiction over the subject matter, and the parties in suit, the Court and its judicial officers would logically enjoy the immunity of error, even if the error trespassed into excess of jurisdiction. And the words "excess" and "clear absence" have become the distinguishing nouns by which the Courts justified their position on the doctrine of judicial immunity.

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[1] These matters have had careful exclusion of fact and law in the reporting of judgments rendered. In *Sullivan v. Choquette*, 289 F. Supplement 780 (abuse of process) the order of execution was used to inflict injury by evicting the Sullivan family into severe winter weather of heavy snowfall and gale winds, with a child critically injured, caused by the haste of 8 daylight hours to find quarters, or to purchase the premises. In *Sullivan v. Choquette*, 289 F. Supp. 780 (breach of contract of lease) the Court said the State Court judgment necessarily stated it was Sullivan who breached the lease; yet the state court judgment was obtained by default through fraud and deception, consequently, the issues of who breached the lease has never been heard. In *Sullivan v. Choquette* in the instant matter the U.S. Court of Appeals carefully excluded in its reporting that one of the torts complaint of was fraud, which constitute jury issues of fact, not law, and the allegation of fraud was ommitted in reporting of this case at 420 F. 2d 674.

Still, this Petitioner, in his approach to this cause of action against the Respondent Kelleher, as the Clerk of the Newburyport District Court, has shown to the Court where the Massachusetts Court lost the jurisdiction on December 13, 1965, while the Defendant was out of the Commonwealth of Massachusetts, and why the Court failed to regain it by statutory and mandatory provisions of General Law C 223 s 34; C 223 s 84; and C 227 s 7 of the Commonwealth of Mass. It showed to this Court that the Respondent Kelleher falsely entered the Sullivan letter from Florida as a "general denial" to give the apparition that Sullivan had pleaded to the charge, and, in spite of the Court's continuance until December 30th, 1965, that no statutory notice of continuance was given in compliance with MGLA C. 227, s 7; and that on December 30th, 1965, although the opportunity to be heard was available, there was no actual notice, either personal or constructive, and the court failed to regain the jurisdiction of the subject and parties under MGLA C. 223, s 84. This burden fell on the Respondent Choquette, to offset this defect, the Respondent Kelleher crossed out the continued date in the docket entries (Ex-128) and entered a default on the original date, so that the docket entries would appear that no continuance occurred. The Defendant had arrived home to defend this frivilous charge, and it was important that he not be aware of the trial date. This was carefully followed through with no statutory notice of default, or execution, which would have given time to appeal. The order of execution was then used to force the future rent of one thousand dollars, ($1,000) and to force the immediate sale of the premises; or to vacate into a snowstorm.

Still yet, this Petitioner has shown to this Court, and to the United States Court of Appeals by solid rulings of United States Supreme, Federal, and Massachusetts Courts;

by Federal and State statutes, that the Newburyport District Court never, for one instant, obtained, or regained a valid jurisdiction over James D. Sullivan, and over the subject matter. Yet, to offset this, the United States Court of Appeals ruled in a completely oblique direct direction from the initial grounds for dismissal in the United States District Court (statute of limitation, and the doctrine of res judicata, and failure to state a cause of action arising from those grounds)[1] to give a land court a jurisdiction which it does not possess by the very statute of its creation, MGLA C, 223 s 84. In stating that a defendant has "actual notice" 1500 miles from the jurisdiction of that Court with only 48 hours to arrive and prepare a defense to a complaint which had not even been served, the Defendant is duty bound to travel at the speed of light, a situation directly in conflict with this Court's ruling in *Roller v. Holly*, 176 U.S. 398; 20 S. Ct. 410; 44 L. ed. 520. It has said that if the continuance occurred that no further service of process is afforded to consummate a valid jurisdiction which is in direct conflict with this Court's ruling in *Wetmore v. Karrick*, 27 S. Ct. 440; 205 U.S. 160. The frivolity of this decision insults the law of impendability, which states that two objects cannot occupy the same space at the same time; nor can a single object occupy two spaces at the same time. It has sidetacked the allegations of fraud, and

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[1] A writ of error in the Supreme Judicial Court of Massachusetts is now pending and has been severely prejudiced by Supreme Court's reluctance to review. The legal defenses of statute of limitations and res judicata have not been raised by the respondents; but ironically, this complaint was dismissed under those grounds in the United States District Court. The respondents have only filed general and categorical denials to the errors assigned. *Sullivan v. Choquette* and the Justices of the Newburyport District Court; No. 2663, Supreme Judicial Court of Massachustts, Essex County.

fraudulent concealment,[1] which are jury issues, and in reporting the Court of Appeals has carefully ommitted the nature of the twenty other errors which were in violation of Court Rules and State Statutes – all in an effort to save the doctrine of judicial immunity; and the United States Supreme Court, by its silence; and refusing to act by review, has given implying consent to this judgment, which has deviated from the patterns and course of the many decisions affecting due process of law; not only with respect to service of process, and opportunity to be heard, but more importantly, with respect to fairness in proceeding as the true test of due process. *Watson v. Patterson*, 358 F. 2nd 297, cert. denied 87 S. Ct. 153, 385 U.S. 876, 17 L. ed. 2nd 296.

It is even more shocking that when the facts and law justifys this Court's discretion to finally police its own judicial system to protect this valuable doctrine, the Court's silence in the matter has given added meaning as to why this doctrine must be eventually replaced with punshing and encumbering legislation to curb this self delegated power; for it is apparent that from the first conception of the doctrine of judicial immunity in *Bradley v. Fisher*, 13 Wall (U.S.) 335, 95 L. Ed. 646, the Court had intended a barrier known as "excess" and "clear absence" to distinguish jurisdiction; yet this Petitioner has irrefutably shown in the matters at bar, that "clear absence" was

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[1] With regard to the Statute of Limitations, fraud allegations extend the time limit on any action in tort or error under General Law C. 260, s 12 of the Commonwealth of Mass. Petitioner did not discover the fraud until Dec. of 1966, one year after the eviction into the snow storm.

the keynote,[1] and the U.S. Court of Appeals has run the grain against every Federal and Supreme Court decision, as well as Massachusetts State Court rulings, to give the Newburyport District Court an imaginary jurisdiction for an imaginary doctrine which now must exist even at the expense of the death of the Constitution of the United States, and its citizens rights. It now destroys that which created it.

These were the legal reasons for granting the Writ, but aside from these, the Petitioner will give to this Court an extremely high moral reason, which, if this Court has any concept of our existence beyond, it will pay heed. At the inception of these matters, the Petitioner sought relief and damages in the form of the return of the Blessed Statutes of The Lady of the Rosary and the Children of Fatima, who were also evicted from the front law of 16 Summit Place, Newburyport, Mass. The tenant-lessee Sullivan had been in the State of Florida, and was building and maintaining an interstate business for the express purpose to earn excess monies to support and perpetuate a National 54 day Rosary Novena to the Queen of the Holy Rosary; to incite and impell families to recite the Rosary; to assist the bringing

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[1] On December 13, 1965, the service of the writ of summary process was constitutionally defective, and in violation of Massachusetts General Laws C. 223 s. 31, C. 223 s. 34, C. 223 s. 84, and C. 227 s. 7. To cure this defect the Clerk of Court, the Respondent Kelleher falsely entered, and fraudulently hid the Sullivan letter from Florida as a "general denial" thereby perfidiously joining the issues, and sending the matter along to judgment. After the Respondents Wells, Beit and Choquette had failed to give statutory notice of continuance (C. 227 s. 7) of the date of December 30th, 1965 as the new trial date, Kelleher falsified the docket entries (Ex-128) to give the appearance that a continance did not occur, along with its required statutory notice of a continuance, with proof thereof. He followed this with the ommission of a statutory notice of default, while the Respondents Wells, Beit, and Choquette gave no service of motions or amendments, pleadings of which are integral part of the record. At no time had the Newburyport District Court gained any type of jurisdiction; and the actions of all of the Respondents were perpetrated in the "clear absence" of any type of jurisdiction, whatsoever.

of peace and love to the hearts of all men, and for the conversion of Russia from the errors she has spread on the world. It has become increasingly apparent from the conflict in Viet-Nam that this conversion, cannot, and will not, be consumated by war and force; only by prayer, as was warned in the message at Fatima, Portgual in 1917 by the Lady of the Rosary.

While in the action of accomplishing this, this Petitioner was called from his task to drive fifteen hundred miles to defend a groundless and malicious charge, and to await a trial, and statutory notice of the date thereof, only to have his constitutional rights flaunted to the winds for the sake of a seven thousand dollar land profit; and his subsequent legal remedies, and causes of action for proper redress completely disregarded by the ludicrious decision of the Federal Courts in Massachusetts, to protect the doctrine of judicial immunity.

These matters were brought to the attention of this Court by the same tenant-lessee, and this Petitioner has presented law and facts with regard to "clear absence" of jurisdiction which gives this Court a clear mandate emanating from the language of ***Bradley v. Fisher, supra,*** as to its duty to guard this nation's judicial system from corruption from within, and to take its whip to the money changers who are still in the temple. The doctrine of judicial immunity will not be a valid excuse in the Court where all of the Judges will be judged, and where the Lady of the Rosary will be called as the very first witness.

CONCLUSION

This Court should possess the courage to send this cause of action back to the United States District Court, with instructions to invalidate the default judgment of the Newburyport District Court, No. 7314 of 1965, and to remand the triable issues of fraud and malicious prosecution to a jury for trial on the merits, on all of the Respondents, including the Respondent Kelleher, where in its final analysis, the money damages will bring the status quo of this Novena to a point where it might have been in December of 1965. There is an inscription at the entrance of a Federal Building in Washington, D.C. which reads

EQUAL JUSTICE TO ALL, UNDER THE LAW

This Petitioner, and the Lady of the Rosary, to date, have not yet found it.

Respectfully submitted,

James D. Sullivan /s/
JAMES D. SULLIVAN

It is hereby certified that this petition for a rehearing of a Writ of Certiorari directed to the United States Court of Appeals for the First Circuit is being presented to this Court in the highest degree of faith, and presented to avert an abortion of justice by the omission of facts and law reported by the United States Court of Appeals for the First Circuit, and is restricted to the grounds of the matter of judicial immunity and the jurisdiction which creates it. I also certify that this petition is presented to this Court by this Petitioner to safeguard our judicial system to the benefit of its two million citizens, and for this Nation, as a whole.

I also certify that I have served upon the Respondents Choquette and Kelleher two copies of the foregoing petition for rehearing, by service through the mails directed to their attorney of record, Benjamin Goldman, Esq. of 6 Beacon Street, Boston, Massachusetts; and two copies to the Respondents Beit and Wells, by service through the mails directed to their attorney of record, John F. Cogan Jr., of 28 State Street, Boston, Mass.

James D. Sullivan /s/
JAMES D. SULLIVAN